

**TCM Law**  
2800 West Sahara (The Plazas)  
2340 Paseo Del Prado Suite D-206  
Las Vegas, Nevada 89102  
T (702) 987-0099  
F (702) 441-8838  
Thomas Michaelides NV State Bar No. 5425  
Email: Tom@TCMLawyer.com  
*Attorney for Plaintiffs and Counterdefendants*

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re	)	CASE NO. BK-S-07-16852-BAM
	)	
THE LAND HOLDING GROUP, INC.,	)	Chapter 11
	)	
Debtor.	)	
	)	
MOSHE GEDALIA, et al.,	)	
	)	
Plaintiffs,	)	
	)	Adv. Case No. 08-01010-BAM
	)	
vs.	)	
	)	<b>REPLY TO DEFENDANT'S POST TRIAL</b>
	)	<b>BRIEF</b>
ITC FINANCIAL SERVICES, INC.,	)	
etc., et al.,	)	
	)	
Defendants.	)	
	)	
	)	
AND RELATED COUNTERCLAIM	)	
	)	

Plaintiffs/Counterdefendants, by and through their  
attorney of record, Thomas C. Michaelides, Esq. hereby Reply to  
the Post Trial Brief filed by The Land Holding Group, Inc.,  
(Land Holding) as follows:

Under the Summary of Facts, the Mansions at Spanish Trails  
(Spanish Trails), Land Holding incorrectly states that at the

1 close of escrow on Spanish Trails, the first \$800,000 of the  
2 purchase price was contributed by the shareholders, David  
3 Melamed (Melamed), Shawn Manshoory (Manshoory) and Jacob Bachar  
4 (Bachar). This statement is patently untrue and is not  
5 supported by the evidence elicited during trial. The trial  
6 testimony, as set forth in Plaintiffs' Pre-Oral Argument Brief,  
7 demonstrated that the shareholders at the close of escrow  
8 included Regency Consulting (Regency), an Amiran related  
9 company, Melamed, Manshoory and Bachar. **RT:October 2, 2009**  
10 **a.m. session Pg. 16 ln 12 through Pg. 17 ln 5)**

14 Likewise, Land Holding's argument that no money from ITC  
15 or the Gedlaias was used to acquire Spanish Trails is also  
16 untrue as the evidence proved that Ron Amiran (Amiran)  
17 wrongfully diverted money from ITC Homes (ITC), money that was  
18 due the Gedalias, by paying so called consulting fees to Amiran  
19 related companies, including Regency.

22 Additionally, Land Holding's statement that the First  
23 National Bank of Arizona (Bank) committed to loan Land Holding  
24 money for construction financing is not supported by the  
25 evidence. The evidence showed that no loan commitment had been  
26 made at the time the Bank withdrew its letter of interest in  
27 the Spanish Trails project.

30 Under the heading, "Litigation" Land Holding claims that  
31 the Gedalias met with the Bank and told them that the members

1 of Land Holding were dishonest and that they should not trust  
2 them. No evidence was presented at trial that supports this  
3 statement. Chip Shaw, an officer of the Bank, testified in his  
4 deposition that he was unaware of any other reason the loan was  
5 declined other than the instant lawsuit. (Shaw Depo. Pg. 13,  
6 lns 4-12) Other than the lawsuit, Shaw does not remember any  
7 other statements made to him by the Gedalias. Therefore, there  
8 is no evidence that was presented to support Land Holding's  
9 contentions that derogatory statements were made against any of  
10 the Land Holding principals.

14 It is interesting to note that Land Holding does not cite  
15 to the record that 1) the Gedalias made derogatory statements  
16 to the Bank; 2) the alleged statements were later shown to be  
17 verifiably untrue; and 3) that Mr. Linscott found the Gedalias'  
18 allegations as to Land Holding were baseless. Land Holding  
19 cannot cite to any trial testimony that supports these  
20 statements, for the simple fact there was no such evidence  
21 presented at trial.

25 Plaintiffs will not respond to Land Holding's arguments  
26 relating to the complaint itself, except to point out that Land  
27 Holding's arguments are for the most part not supported by the  
28 evidence, and will stand on the arguments made and set forth in  
29 the Pre-Oral Argument Brief previously filed herein.

31 **Land Holding's Counterclaims:**

1 Land Holding set forth statements made by Plaintiffs'  
2 counsel during his opening statement as if this was testimony  
3 presented at trial.  
4

5 Again, Land Holding argument is not based on the trial  
6 evidence, but is solely on what it wishes the evidence showed.  
7 For example, Land Holding states that the Bank "cancelled the  
8 construction loan to Land Holding because Mr. and Mrs. Gedalia  
9 filed the meritless lawsuit against Land Holding, made  
10 defamatory remarks about Ron Amiran and the Spanish Trails  
11 project and directed Chip Shaw to cancel the loan." (Brief: Pg.  
12 22, ln 28 through Pg. 23 ln 2)  
13  
14

15 The trial and deposition testimony cited by Land Holding  
16 only supports its contention that the Bank cancelled its  
17 interest in providing construction financing for Spanish Trails  
18 due to the lawsuit filed by the Gedlalias. Absolutely no  
19 evidence was presented, or cited to, which supports the  
20 argument that the Gedalias' lawsuit was meritless and/or that  
21 they made defamatory remarks about Amiran and the project which  
22 caused the Bank to cancel a loan commitment.  
23  
24  
25

26 The evidence was overwhelming, and as set forth in  
27 Plaintiffs' Pre-Oral Argument Brief, demonstrated that the  
28 lawsuit was meritorious (Resulted in a Judgment in excess of \$9  
29 Million dollars in favor of the Gedalias), that Amiran  
30 wrongfully diverted money from ITC that was due the Gedalias to  
31

1 related companies, including Regency, which then purchased  
2 shares in Land Holding. Therefore, the lawsuit was justified.  
3 If the Gedalias did in fact make statements regarding the  
4 veracity of Amiran, all such statements were proven to be true.  
5 It is black letter law that truth is a complete defense to any  
6 perceived defamation.  
7

8  
9 To constitute an abuse of process under Arizona law, a  
10 plaintiff must show "that the defendant has (1) used a legal  
11 process against the plaintiff; (2) primarily to accomplish a  
12 purpose for which the process was not designed; and, (3) harm  
13 has been caused to the plaintiff by such misuse of process."  
14 **Acomb v. Foster**, No. 2 CA-CV 2002-0013 (Ariz.App.Div. 2,  
15 4/15/2003) citing **Nienstedt**, 133 Ariz. at 353, 651 P.2d at 881.  
16 In other words, the defendant must have willfully used the  
17 "judicial process for an ulterior purpose not proper in the  
18 regular conduct of the proceedings." **Morn v. City of Phoenix**,  
19 152 Ariz. 164, 166, 730 P.2d 873, 875 (App. 1986); see also 2  
20 **Dan B. Dobbs, The Law of Torts** § 438 (2001).  
21

22  
23 Because money that was due the Gedalias was used to  
24 purchase a 25% interest in Land Holding, they had every right  
25 to record a lis pendens against the property to protect their  
26 rights to a partial ownership interest in the property.  
27 Therefore, the evidence strongly supported the Gedalias right  
28 to record the lis pendens.  
29  
30  
31

However, the lis pendens was not removed because the Gedalias found that it was "improperly" recorded. The testimony of Eeshak Gedalia was to the effect that when he discovered that there were other investors that put money into Land Holding, two of which had been previously acquainted with, the Gedalias decided to release the lis pendens and forgo their \$200,000 interest in the property. Despite the fact that Land Holding refused to dismiss its counterclaim, the Gedalias did in fact release the lis pendens, leaving Land Holding to do with the property as it saw fit.

## CONCLUSION

All of Land Holding's counterclaims must fail in that no evidence was elicited at trial that would support the elements of each cause of action. In fact, with little doubt, the evidence established that the Gedalias properly used the legal system to obtain a recovery of money embezzled from them by Amiran. The evidence strongly suggests that Melamed, who had been a friend of Amiran for over 20 years, knew that Amiran had embezzled money from the Gedalias and actively assisted him in acquiring Spanish Trails.

The evidence also suggests that the Bank only had an interest in providing Land Holding the construction financing for Spanish Trail due to Amiran's involvement as the developer. When the Bank found out that Amiran was involved in a lawsuit

1 with Gedalias, who had guaranteed all loans the Bank made to  
2 ITC, it no longer had any interest in providing the financing.  
3 Even if Melamed was totally unaware of Amiran's illegal  
4 activities and was "duped" by Amiran to invest in Spanish  
5 Trails, at the time Melamed purchased Regency's interest in  
6 Land Holding, he was aware that the instant lawsuit was filed.  
7 This should have put Melamed on notice that he stood a chance  
8 of losing his additional investment.  
9

11 It is particularly telling that Land Holding made only  
12 limited attempts to obtain other financing for Spanish Trail  
13 after the Bank withdrew its interest. Instead of actively  
14 seeking another developer and construction financing it, and  
15 its principals, did nothing hoping to recover against parties  
16 whom they knew had "deep pockets."  
17

19 Therefore, it is submitted that judgment should be in  
20 favor of the Gedalias on all of their applicable claims as set  
21 forth in the instant complaint. Further, judgment should be in  
22 favor of the Gedalias, and against Land Holding on the  
23 applicable causes of action set forth in the counterclaim.  
24

25 Respectfully submitted,  
26

27 DATED: December 17, 2009

28 /s/ Thomas Michaelides

29 **TCM Law**  
30 2800 West Sahara (The Plazas)  
31 2340 Paseo Del Prado Suite D-206  
Las Vegas, Nevada 89102  
T (702) 987-0099

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

F (702) 441-8838  
Thomas Michaelides NV State Bar No. 5425  
Email: Tom@TCMLawyer.com  
*Attorney for Plaintiffs and Counterdefendants*



**CERTIFICATE OF SERVICE**

1. On December 17<sup>th</sup> 2009, I served the following document(s):

**REPLY TO DEFENDANT'S POST TRIAL BRIEF**

I served the above-named document(s) by the following means to the persons as listed below:

- a. ECF System (attached the "Notice of Electronic Filing" or list all persons and addresses):
- U.S. TRUSTEE – LV – 11 [USTPRegion17.lv.ecf@usdoj.gov](mailto:USTPRegion17.lv.ecf@usdoj.gov)
    - United States mail, postage fully prepaid (list persons and addresses):
    - Personal Service (list persons and addresses): I personally delivered the document(s) to the persons at these addresses:
    - By direct email (as opposed to through the ECF System) (list persons and email addresses):

The Land Holding Group, Inc.  
c/o David Melamed  
3376 Gravenstein Highway South  
Sebastopol, CA 85472  
Debtor

Trust, #814  
  
James R. Adams  
Adams & Rocheleau, LLC  
400 N. Stephanie St., #260  
Henderson, NV 89014  
Attorneys for Receiver Ashley Hall

The Land Holding Group, Inc.  
c/o David Melamed  
628 Levening Ave., Suite B  
Los Angeles, CA 90024  
Debtor

Jeffrey M. Cohon  
Los Angeles, CA  
[jcohon@cohonpollak.com](mailto:jcohon@cohonpollak.com)

Ambrish S. Sidhu  
Sidue Law Firm  
810 S. Casino Center Blvd., Suite 104  
Las Vegas, NV 89101  
Email : [asidu@sidhulawfirm.com](mailto:asidu@sidhulawfirm.com)  
Co Counsel for Debtor

U.S. Trustee  
U.S. Trustee – LV – 11  
300 Las Vegas Blvd., Suite 4300  
Las Vegas, NV 89101

Michael J. Rusing  
Rusing & Lopez, PLLC  
6262 N. Swan Rd., Suite 200  
Tucson, AZ 85718  
Attorneys for Title Security of Arizona

- By fax transmission (list persons and fax numbers):
- By messenger:

**I declare under penalty of perjury that the foregoing is true and correct.**

DATED: December 17, 2009

Respectfully submitted,

/s/ Thomas Michaelides

**TCM Law**

2800 West Sahara (The Plazas)

2340 Paseo Del Prado Suite D-206

Las Vegas, Nevada 89102

T (702) 987-0099

F (702) 441-8838

Thomas Michaelides NV State Bar No. 5425

Email: Tom@TCMLawyer.com

*Attorney for Plaintiffs and Counterdefendants*